

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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KENNETH J. BELLET,

Plaintiff,

v.

**DECISION & ORDER**  
03-CV-27S

CITY OF BUFFALO, et al.,

Defendants.

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1. Plaintiff commenced this action on January 14, 2003, by filing a *pro se* Complaint in the United States District Court for the Western District of New York.

2. On June 27, 2003, Plaintiff filed a Motion for Judicial Recusal, asking this Court to disqualify itself from presiding over this case because it allegedly evidenced bias against Plaintiff in a prior action. By Order entered on July 18, 2003, this Court denied Plaintiff's Motion for Judicial Recusal.

3. Plaintiff filed a Notice of Appeal and a Notice of Objection to the Presiding Judge on August 15, 2003, and September 12, 2003, respectively. A review of the official docket reveals that a Mandate was issued by the Second Circuit Court of Appeals resolving Plaintiff's appeal on September 27, 2004.

4. Acting under the presumption that Plaintiff's appeal had been resolved, this Court entered a Decision and Order dismissing several of Plaintiff's claims on November 21, 2004. On December 10, 2004, Plaintiff filed second motion requesting that this Court disqualify itself from presiding over this case. By the same motion, Plaintiff asked this Court to vacate its November 21, 2004 Decision and Order.

5. Subsequently, this Court discovered that the above-referenced Mandate was

erroneously docketed in this case, and that Plaintiff's appeal is still pending at the Second Circuit Court of Appeals.

IT HEREBY IS ORDERED that the Clerk of the Court is directed to strike the erroneously filed Mandate (Docket No. 9) from the official docket relating to this case.

FURTHER that Plaintiff's Second Motion for Judicial Recusal (Docket No. 11) is DENIED as premature.

FURTHER that this Court's November 21, 2004 Decision and Order (Docket No. 10) is VACATED pending resolution of Plaintiff's appeal.

FURTHER that Plaintiff's Motion to Vacate this Court's November 21, 2004 Decision and Order (Docket No. 11) is DENIED as moot.

FURTHER that the Clerk of the Court is directed to reinstate the above-referenced Decision and Order when a mandate resolving Plaintiff's appeal is returned by the Second Circuit Court of Appeals.

SO ORDERED.

Dated: June 1, 2005  
Buffalo, New York

/s/William M. Skretny  
WILLIAM M. SKRETNY  
United States District Judge